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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,911	01/18/2007	Kenji Shizuka	296009US0PCT	4718
22850	7590	02/02/2011		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER HAN, KWANG S	
			ART UNIT 1727	PAPER NUMBER
			NOTIFICATION DATE 02/02/2011	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary**Application No.**

10/591,911

Applicant(s)

SHIZUKA ET AL.

Examiner

Kwang Han

Art Unit

1727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

**LAYERED LITHIUM NICKEL MANGANESE COBALT COMPOSITE OXIDE POWDER
FOR MATERIAL OF POSITIVE ELECTRODE OF LITHIUM SECONDARY BATTERY,
PROCESS FOR PRODUCING THE SAME, POSITIVE ELECTRODE OF LITHIUM
SECONDARY BATTERY THEREFROM, AND LITHIUM SECONDARY BATTERY**

Examiner: K. Han SN: 10/591,911 Art Unit: 1727 January 28, 2011

Detailed Action

1. The Applicant's amendment filed on November 11, 2011 was received. Claims 4-8 were amended. Claims 10-19 were added.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

3. The claim rejections under 35 U.S.C. 112, second paragraph, on claims 1-9 are withdrawn, because of Applicant's arguments.
4. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 2, 10-12 and 17-19, it is unclear and indefinite as to whether or not carbon is present in the powder of the electrode material since the value of C/S being 0.025 or smaller may include having no carbon present which meet the limitations of the claim when C=0 and a weight percent "lower" includes having none. All claims dependent on claims 1 and 2 are also rejected for the same. For the purposes of compact prosecution it will be assumed carbon is not present in the powder.

Claim Rejections - 35 USC § 103

5. The claim rejection under 35 U.S.C. 103(a) as unpatentable over Hosoya et al. in view of Hampden-Smith et al. on claims 1-4 and 6-9 is withdrawn.
6. The claim rejection under 35 U.S.C. 103(a) as unpatentable over Hosoya et al. in view of Hampden-Smith et al. on claims 1-4 and 6-9 is withdrawn.
7. Claims 1-4 and 6-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hosoya et al. (US 2004/0076882) in view of Hampden-Smith et al. (US 2003/0054218).

Regarding claims 1, 2, 4, 6, and 10-19, Hosoya discloses a powder of a layered lithium-nickel-manganese-cobalt composite oxide for use as a cathode material in a lithium secondary battery [0038] characterized by having a formula defined by $\text{Li}_s\text{Ni}_{1-t-u}\text{Mn}_t\text{M}'_u\text{O}_2$ where M' is any one or more transition metals (e.g. Co) [0048] and s, t, and u satisfy $0.90 \leq s < 1.1$, $0.05 \leq t \leq 0.50$, and $0.01 \leq u \leq 0.30$, respectively [0046-0048] but is silent towards the volume resistivity and BET specific surface area. Regarding the limitations toward the volume resistivity in a state of being compacted at a pressure of 40MPa, it has been held by the courts that if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. In re Spada, 911 F.2d. 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). See MPEP 2112.01.

Hampden-Smith teaches a secondary battery where the electrode is formed from a lithium based fine powder [0122] where the BET surface area of the powder should be

as high as possible to increase catalytic activity [0150] teaching the BET surface area of the powder to be a result effective variable. It would have been obvious to one of ordinary skill in the art at the time of the invention to vary the carbon weight percentage and the BET specific surface area since it has been held that discovering the optimum ranges for a result effective variable such as weight percentage and BET specific surface area involves only routine skill in the art in the absence of showing of criticality in the claimed range (MPEP 2144.05) In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 3, Hosoya discloses a value of y/x which is between 0.95 and 2.5 (e.g. when $t=0.4$ and $u=0.2$).

Regarding claim 7, it is noted that this claim is a product-by-process claim. "Even though product-by-process are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F. 2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). The powder structure of Hosoya is similar to that of the Applicant's, Applicant's process for producing the powder is not given patentable weight in the claims.

Regarding claims 8 and 9, Hosoya discloses a positive electrode for a lithium secondary battery comprising a current collector having thereon a positive electrode

active material layer, a non-aqueous electrolyte containing a lithium salt and a positive electrode capable of intercalating/deintercalating lithium [0014, 0020, 0064].

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hosoya et al. and Hampden-Smith et al. as applied to claim 1 or 2 above, and further in view of Shizuka (US 2005/0158546).

The teachings of Hosoya and Hampden-Smith as discussed above are herein incorporated.

Regarding claim 5, Hosoya discloses mean particle size of the composite oxide to be 2 microns or more [0051] but is silent towards the bulk density and median diameter of the composite oxide particles.

Shizuka teaches a layered lithium nickel based compound oxide has properties including a median diameter from 9-20 microns and a bulk density of at least 2.0g/cc because it is capable of providing a lithium secondary cell having a high capacity and excellent rate characteristics [Abstract]. It would have been obvious to one of ordinary skill in the art at the time of the invention for the composite oxide of Hosoya and Hampden-Smith to have properties including a median diameter from 9-20 microns and a bulk density of at least 2.0g/cc because it is capable of providing a lithium secondary cell having a high capacity and excellent rate characteristics.

Contact/Correspondence Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kwang Han whose telephone number is (571) 270-5264. The examiner can normally be reached on Monday through Friday 8:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dah-Wei Yuan can be reached on (571) 272-1295. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. H./
Examiner, Art Unit 1727

/Dah-Wei D. Yuan/
Supervisory Patent Examiner, Art Unit 1727